

1 Beverly Thorp
2 c/o Box 2070
3 Sunnyvale CA 94087
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C
7 UNITED STATES DISTRICT COURT
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9Northern District of California
San Jose Division

JUN 10 2008

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

13 Plaintiffs:

14 Beverly Thorp
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Plaintiffs:

Beverly Thorp

v.

Case No. C 08 – 01449 JF

Defendant:

Judge Robert Atack, et al.
Superior Court of Santa Cruz
701 Ocean St.
Santa Cruz CA 95060Notice of Motion, a Motion For
Summary Judgment, and a
Memorandum of Points and
Authority

Does 1 through 99

30 Notice of Motion, a Motion For Summary Judgment, and a
31 Memorandum of Points and Authority
32
33

34 PLEASE TAKE NOTICE on Friday, 20 June 2008, at 9:00 AM, or as soon thereafter as
35 the matter can be heard in Department 3, fifth floor, in the United State District Court of
36 Northern California, Santa Clara County, located at 280 S. First Street, San Jose,
37 California. The Plaintiff will move the Court for a Summary Judgment against the
38 Defendant and Does 1 through 99.

I, Beverly Ann Thorp, a flesh-and-blood woman, a human being, an Authorized
Representative and Agent for BEVERLY THORP, sui juris, Ingenuitas juris et de jure, a
State National citizen and NOT a Federal Zone citizen. Under a special appearance of

1 Propria Persona, Without Prejudice, under the Uniform Commercial Code, UCC 1-207,
2 UCC 1-103, and UCC 3-402, have first hand knowledge of the facts stated herein, and
3 being competent in mind and body to testify, declare and affirm the facts stated herein are
4 true correct, complete and admissible as evidence, in all material fact, not misrepresented
5 and are made pursuant to the Laws of the Union of States of America and the California
6 Republic.

7

8 **UCC 1-207 Sufficiency of reservation.**

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10 Any expression indicating any intention to preserve rights is sufficient, such as "without
11 prejudice," "under protest," "under reservation," or "with reservation of all our rights."

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13 The making of a valid reservation of rights preserves whatever rights the person possesses
14 and prevents the loss of such right by application of concepts of waiver or estoppel.

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16 **UCC 1-103 Common law.**

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18 The UCC Code is "Complementary" to Common Law which remains in force except where
19 displaced by the Code.

20

21 All statutes should be construed in harmony with the Common Law unless there is a clear
22 legislative intent to abrogate Common Law. ... "The UCC Code cannot be read to preclude
23 a Common Law action."

24

25 *The essence of procedural due process is fundamental fairness. de Koevend v. Board of
26 Educ., 688 P.2d 219, 227 (Colo. 1984). The parties have a right to be heard when their
27 rights are affected, and in order to enjoy this right they must first be notified. City of
28 Chicago v. American National Bank & Trust Co. (1988), 171 Ill. App. 3d 680, 688, 121 Ill.
29 Dec. 608, 525 N.E.2d 915. Due process requires, at a minimum, notice and the opportunity
30 for a meaningful hearing before an impartial tribunal. Mathews v. Eldridge, 424 U.S. 319,
31 333, 348-49 (1976).*

Statement of Fact

On 14 March 2008, a Summons and Complaint was filed and sent by Certified Mailed to the Defendant Judge Atack and Does 1 through 99 in conformity with California and Federal law.

The summons sent to the Defendant(s) clearly states:

“YOU ARE HEREBY SUMMONED and required to serve upon [the] Plaintiff an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, [a] judgment by default will be taken against you for the relief demanded in the complaint.”

The Summons was signed by a court clerk, Betty Walton, and stamped with the Court's Seal, dated 14 March 2008. A signed copy of the Proof of Delivery of the Certified Mail of the Summons and Complaint to the Defendant(s) was mail by regular mail to the Court.

On 17 March 2008, Teresa Vega signed the Certified Mail Return Receipt Signature Card for the Plaintiff's Summons and Complaint sent to the Defendant(s). This Return Receipt Signature Card and the Certified Mail Receipt is indisputable proof the Defendants received and had knowledge of the Plaintiff's Summons and Complaint. Celotex Corp. V. Catrett, 477 U.S. 317, 324 (1984).

On the 17th of April 2008, the Defendants still has NOT answered the Plaintiff's Summons and Complaint. This is 33 days after the Plaintiff's Summons and Complaint was filed, and it is long after the 20 days generously allowed to respond.

The Defendants have answered the Plaintiff's Summons and Complaint by their Silence, with their positive tacit consent of agreement. Since the Defendants are in complete agreement with the Plaintiff's Summons and Complaint, **"there is no genuine issue of**

1 any material fact or law and the Plaintiff is entitled to a SUMMARY JUDGMENT as a
2 matter of law."

3
4 This Motion for Summary Judgment is confirmation the Defendants has had Constructive
5 Notice of their responsibility and it imposes liability for negligence against the Defendants.
6 There was actual Notice on the issued Summons. If the Defendants would have paid
7 attention (which is their job) and been aware of the condition by being reasonably attentive,
8 they would have known they had received notice. This has been upheld by the United
9 States Supreme Court in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306
10 (1950).

11
12 It does not matter who the Defendants are or what attorney or law office is defending the
13 Defendants, they still have to abide by the law to the fullest extent. The Defendants are
14 NOT entitled to any special liberties or compensations, nor are their attorneys.

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16 The Plaintiff has submitted to the Court filed documents, indisputable evidence of
17 conformity to the law, and statement of the Defendants complete agreement to the
18 Plaintiff's Summons and Complaint. There is NOTHING to prove at a trial. All of the issues
19 of material fact are resolved. The Defendants have eliminated all material issues, so there
20 remains NO "facts" for the Court to decide at a trial. The record is clear there are no
21 remaining issues of material fact.

22
23 The Plaintiff is entitled to summary judgment when there is no "genuine issue of material
24 fact" and the undisputed facts warrant judgment for the Plaintiff as a matter of law. Federal
25 Rules of Civil Procedures 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct.
26 2505, 91 L. Ed.2d 202 (1986).

27
28 The Plaintiff has the authority to seek the relief which is being sought.

The Relief Requested by the Plaintiff

1. I request the United States District Court **Declare Judge Attack and All of the Does 1 to 99 to be in Permanent Default.**
2. I request the United States District Court **DISQUALIFY Judge Attack IMMEDIATELY and PERMANENTLY.**
3. I request the United States District Court **Declare ALL of Judge Attack's Rulings and Judgments to be NULL and VOID** as a result this Judgment.
4. I request the United States District Court **Declare ALL of Judge Burdick's Rulings and Judgments to be NULL and VOID** as a result this Judgment.
5. I request the United States District Court to **Declare Judge Attack and Judge Burdick and All of the Does 1 to 99 to have operated as individuals NOT in an official capacity representing the State of California in their handling of Santa Cruz County Superior Case, CV 155983, and each individual has yielded up any claim to immunity from prosecution.**
6. I request the United States District Court to allow me, the Plaintiff, to submit at a later date damage claims and expenses for each above named individuals who are named jointly, severally, and individually.

Further, Beverly Thorp saith naught.

1 Without Prejudice, UCC 1-207, UCC 1-103, & UCC 3-402

9 June 2008

2 Beverly Thorp, an Authorized Representative and Agent

3
4 
5 , In Propria Persona Sui Juris
6 A Free Woman, Sovereign American, with Constitutional Rights intact UCC § 3-402 (b)(1)
7 De Jure Soli, Jus Sanguinis, Coronea, Teste Meipso.

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11 Reserving All Rights, Giving Up None.

12 Notice to agent is notice to principal. Noted to principal is notice to agent.

13 All Rights Reserved (UCC1-308)

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PROOF OF SERVICE / DELIVERY

(CCP § 413.10 – 416.90)

I am a citizen of the California Republic. I am over the age of eighteen years. I am able and willing to testify to the facts stated herein.

I served the following document(s) on all appropriate parties in this action by placing a copy of the said document(s) in a sealed envelope, with postage attached, and deposited it with the U.S. Postal Service.

- **Notice of Motion, a Motion For Summary Judgment, and a Memorandum of Points and Authority (FC007)**

I caused such envelope to be deposited in the mail with the U.S. Postal Service. The envelope was mailed with postage thereon fully prepaid. Mailed to each of the following:

Judge Robert Atack, 701 Ocean St., Santa Cruz CA 95060

Judge Paul Burdick, 701 Ocean St., Santa Cruz CA 95060

Troy Overton, 455 Golden Gate Ave. Ste 11000. San Francisco CA 94102

The Proof of Service / Delivery signed by the authorized courier is on file and is available upon demand.

I am readily familiar with the practice of collection and processing correspondence for mailing. The above document(s) were deposited with the U.S. Postal Service within the time frame prescribed by law.

I declare, under penalty of perjury of the laws of the State of California the foregoing is true and correct.

9 June 2008

Dr. Gene S. Ritchey
Dr. Gene Ritchey

Dr. Gene Ritchey /
c/o Box 2070
Sunnyvale CA 94087